



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Oscar Carranza : ORDER
Tax Registry No. 931582 : OF
Housing Borough Manhattan : DISMISSAL
-----X

Police Officer Oscar Carranza, Tax Registry No. 931582, Shield No. 10824, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2014-12776, as set forth on form P.D. 468-121, dated December 2, 2014, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Oscar Carranza from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. April 7, 2016



POLICE DEPARTMENT

February 3, 2016

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2014-12776

Police Officer Oscar Carranza :

Tax Registry No. 931582 :

Housing Borough Manhattan :

-----X
At:

Police Headquarters
One Police Plaza
New York, New York 10038

Before:

Honorable David S. Weisel
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department:

Vivian Joo & Anna Krutaya, Esqs.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Roger S. Blank
373 Park Avenue South, 6th Floor
New York, NY 10016

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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POLICE OFFICER OSCAR CARRANZA

Charges and Specifications:

1. Said Police Officer Oscar Carranza, assigned to the 40th Precinct, on or about November 21, 2014, while on duty, in the vicinity of Canal Place and East 138th Street, Bronx County, wrongfully and without just cause used force against Roydall Armstrong in that said Police Officer repeatedly struck Roydall Armstrong while he was handcuffed.

P.G. 203-11, Page 1, Paragraph 2 – USE OF FORCE – GENERAL REGULATIONS

2. Said Police Officer Oscar Carranza, assigned to the 40th Precinct, on or about November 21, 2014, while on duty, in the vicinity of Canal Place and East 138th Street, Bronx County, wrongfully and without just cause used force against Person A in that said Police Officer kicked Person A while he was handcuffed.

P.G. 203-11, Page 1, Paragraph 2 – USE OF FORCE – GENERAL REGULATIONS

Appearances:

For the Department: Vivian Joo & Anna Krutaya, Esqs.

For Respondent: Roger S. Blank, Esq.

Dates of Hearing:

November 9, 12-13 and 24, 2015

Decision:

Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the tribunal on November 9, 12-13 and 24, 2015. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Roydall Armstrong, Police Officers Brian Cruz, Argenis Rosado, Isaac Mercado, Edwin Rivera, Boris Salamea, Christopher Campbell, Michael Sheehan and Isidore Rodriguez, and Sergeants Genti Bektashaj, Darren D'Auteuil and Angelo Sedacca as witnesses. Respondent called Dr. Roy Lubit and Esther Ford as witnesses, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing and assessing the credibility of the witnesses, Respondent is found Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Facts of the Incident

The charges in this case arise from an incident that occurred at approximately 0445 hours on November 21, 2014, in the vicinity of 138th and Canal Streets in the Bronx within the confines of the 40 Precinct. That morning, Police Officers Brian Cruz and Argenis Rosado were conducting a directed patrol in front of the Sin City strip club, a problematic area within the precinct. The officers were approached by a yellow cab driver. He told them that he was coming off shift (his base was on the same block as Sin City), when his taxi was damaged by a group of people when they tried to hail him and he refused the fare. The driver pointed to two men and a woman, later identified as Roydall Armstrong, Person A, and Person B, who were standing about a block away (Tr. 75, 108-10, 242).

At 0445 hours, Police Officers Edwin Rivera and Boris Salamea arrived on the scene. Mercado, Rivera and Salamea assisted in the handcuffing of Person A on the sidewalk. Roydall was handcuffed and leaning over the hood of a police vehicle as Cruz stood over him. Respondent left Person A, walked over to the vehicle, and struck Roydall three times in the head. After the second strike, Roydall fell off the hood of the vehicle and onto the ground. Cruz let go of him and walked away. Respondent grabbed the back of Roydall's neck and slammed his head into the ground. With his right hand, Respondent reached toward his gun belt. As Roydall lay face down in the street, Respondent picked him up by his handcuffs and dragged him a few feet from the vehicle.

Additional officers arrived on the scene. At 0447, Roydall was picked up off the ground and placed back onto the hood of the police vehicle, where Respondent struck him again. Respondent then walked back to the sidewalk and kicked Person A, who was being held down on the ground by Mercado (see Dept. Ex. 2, still capture from video at moment of kick, showing various officers' positions).

According to Respondent, while he and Mercado were trying to prevent Roydall and Person A from interfering with Person B's arrest, one of them spit in his face. Rosado corroborated this. At trial, Respondent contended that he immediately feared he was going to contract the Ebola virus because it was being mentioned a lot in the media at the time (the doctor that returned to New York from treating Ebola patients in the ongoing West African epidemic arrived in late October 2014). The Department had issued Ebola warnings to its personnel (Tr. 387;

Respt. Ex. A, Operations Order; Ex. B, Medical Division advisory pamphlet). Respondent did not mention that he had been afraid of contracting Ebola during his official Department interview (Tr. 72, 250, 387).

Roydall, Person A and Person B were taken to the hospital and IAB was notified as a result (Tr. 17, 343-44, 346). Roydall and Person A both suffered orbital fractures (Dept. Ex. 3a-b, medical records). Roydall testified at trial that in addition to the orbital fracture, he suffered a sprained ankle, a back injury, and a permanent "knot" or lump on his forehead. He saw a chiropractor and attended physical therapy for his injuries (Tr. 161; Dept. Ex. 4a-c, photographs of Roydall's injuries; Dept. Ex. 6a-c, Person A's injuries). Both Roydall and Person A denied being intoxicated and resisting arrest (Person A currently is incarcerated in state prison on an unrelated drug charge and did not testify) (Tr. 154, 169, 189, 199; Respt. Ex. 5a-b, IAB interview of Person A).

Respondent is charged with repeatedly striking Roydall Armstrong while he was handcuffed. Cruz testified that he had Roydall under control as he stood over him, rear-cuffed and leaning over the hood of the police vehicle. As Cruz held Roydall from behind, Respondent approached and hit Roydall twice. Roydall then was "pulled from [Cruz's] grip onto the floor" by Respondent. On cross examination, Cruz testified that Roydall was moving around a little and potentially could have fled. But on re-direct examination, Cruz acknowledged that he had Roydall under control and did not ask for assistance at any point (Tr. 113-14, 119, 129).

Rosado testified that he saw Respondent strike Roydall on the hood of the vehicle with his expandable baton in the head from about 15 to 20 feet away (Tr. 248-49).

Police Officer Christopher Campbell testified that when he arrived on scene all three individuals were handcuffed. Roydall was lying face down on the ground next to a police vehicle, and Campbell asked him if he was able to get up. Roydall said no, and Campbell picked him up and placed him on his back on the RMP. Campbell also noticed that Respondent had a mixture of blood and spit on his face and hat. Respondent appeared to be disoriented and scared (Tr. 234-38).

Though Respondent claimed that he did not remember the interaction with Roydall on the vehicle from his own memory, he conceded that the surveillance footage did in fact show him striking Roydall while he was handcuffed. Respondent asserted that when Roydall was on the hood of the vehicle, he thought he was resisting arrest and did not know that he was handcuffed and secured at that time. He thought that no other officers were taking police action and that it was up to him to get Roydall under control (see Respondent's expert's testimony, *infra*). Respondent claimed that his belief Roydall was not yet handcuffed was supported by the surveillance video, which showed him reaching toward his gun belt with his right hand while he was on top of Roydall. Respondent testified that he instead was reaching for his handcuffs to handcuff Roydall. Respondent further testified that once he realized Roydall was under control, he had no intent to harm him in any way. In fact, once he realized that Roydall was no longer a threat, he pulled Roydall away from the front of the vehicle, which was in the street, for his own safety (Tr. 388, 392, 395, 397, 414, 417-18, 441).

Respondent also is charged with kicking Person A while he was handcuffed. Police Officers Michael Sheehan and Isidore Rodriguez testified that when they arrived on the scene, they walked toward Mercado, Rivera, Salamea, and a handcuffed individual who appeared very upset. Both officers testified that Respondent walked up to the individual and kicked him in either the head or face. Sheehan testified that Respondent also appeared to be very upset. He told Sheehan that he had been spit on and that he had blood in his mouth as a result. Rodriguez testified that he observed bloody saliva in Respondent's hat and advised him to seek medical attention. According to Rodriguez, Respondent was panicking and on the verge of tears (Tr. 86-87, 89-90, 97-98, 349-51, 354-55).

Mercado testified that once the initial altercation with Person A Roydall and Person B had ended and all three were handcuffed, he was on the sidewalk with Person A holding him down.

Respondent came over and kicked Person A in the face. Respondent told Mercado that he had been spit on and was worried about contamination (Tr. 134, 136-37, 143).

Rivera and Salamea testified that they assisted Mercado in handcuffing Person A. Rivera testified that he was trying to calm Person A down because he was intoxicated and irate. Respondent approached and began arguing with Person A, before he kicked him in the face. Salamea also testified that Respondent approached Person A and kicked him somewhere in the upper body. At some point thereafter, Salamea noticed that Respondent's hat had spit on it (Tr. 210, 220, 226).

Respondent testified that when he walked over to the sidewalk, he thought that Person A was going to get up off the ground, though Mercado was restraining him. In the moment, he did not see the four other officers surrounding him. He made a kicking motion toward Person A in an effort to scare him, but denied that his kick actually made contact with Person A's body (Tr. 394, 433).

Additionally, Respondent testified that he "felt lost all throughout this incident." What he saw in the surveillance video is not what he recalled happening. Even after realizing that both Roydall and Person A were under control, Respondent testified that he still believed he was going to die (Tr. 396, 401).

Mercado, Cruz, Rivera, Salamea, Sheehan and Rodriguez all were served with charges and specifications arising from this incident and each negotiated penalties that are pending before the Police Commissioner. The charges involved failing to notify IAB of excessive force, and in Cruz's case using excessive force, against Person B, when he struck her in the face in response to her kicking him in or around the buttocks (Tr. 91-92, 122, 211, 221, 352).¹

¹ Mercado did not testify about his charges and specifications, but he similarly pleaded guilty to failing to notify (Case No. 2015-13558). The recommended plea and penalty also are pending before the Police Commissioner.

Defense of Acute Stress Disorder

Dr. Roy Lubit was board-certified in the fields of psychology, neurology, forensic psychiatry, and child and adolescent psychiatry (Tr. 271; Respt. Ex. E, curriculum vitae). He was deemed an expert in the field of forensic psychiatry, specifically related to stress. Lubit indicated that in general he was retained by parties in litigation, either plaintiffs or defendants, and then gave them his expert opinion, which was either favorable or unfavorable to who had hired him (Tr. 275-76).

Lubit testified that he met with Respondent and reviewed the surveillance footage with him. According to Lubit, during their discussion Respondent described the symptoms of acute stress disorder. Lubit explained that acute stress disorder can cause an individual's fight-or-flight reaction, i.e., the acute stress response, to go into overdrive. When faced with a significant danger, an individual undergoes a biochemical event during which the body produces more epinephrine and cortisol in an effort to react to the danger. The initiation of the fight-or-flight response can cause an individual to miss what is occurring in her surrounding environment, other than what she is focused on. Additionally, an individual's memory fluctuates for the period of time during which she is experiencing an acute stress reaction (Tr. 276, 278-81).

Lubit testified that Respondent told him he was spit at in the face, and some of the saliva entered his mouth. Respondent stated that at that moment he believed he was going to get Ebola and probably die. Respondent also explained to Lubit that during the incident he did not feel like other officers were present and felt as though he had to handle the situation by himself. When viewing the surveillance video with Lubit, Respondent also stated that he saw things on the video that he did not recall happening. According to Lubit, Respondent's experience was consistent with dissociation, in which there is "a loss of connection between our experience of ourselves, our perception of the world, our memory of our history." A feeling of severe danger can cause

an individual to dissociate to some extent. Lubit testified that Respondent experienced some degree of dissociation “that limited his perception of and appreciation of the fact that there were other officers there who were also able to help him, and he felt that he was alone with all these people” (Tr. 278-79, 281, 283-84).

Lubit testified that during their initial meeting, Respondent did not tell him that the spit also had blood in it. Lubit found this point significant for Respondent’s credibility as well being consistent with dissociation and acute stress disorder, in that Respondent has a “fluctuating memory” of what occurred (Tr. 278, 288).

On cross examination, Lubit conceded that his evaluation was based solely on speaking to Respondent and watching the video, as he did not speak to any of the other officers seen in the video. Lubit asserted that despite diagnosing Respondent with acute stress disorder as a result of this incident, he did not believe that Respondent has a psychological disorder that would impede his ability to function as an officer (Tr. 290, 307).

In support of this defense, Respondent also called Esther Ford, a Fire Department Emergency Medical Technician with whom Respondent became friendly through work. Ford spoke to Respondent in the emergency room on November 21, 2014. Ford testified that she was working on an unrelated matter when she received a text message from Respondent stating he was on his way to the hospital and needed to speak with her. Respondent told Ford that he had been spit on, but did not tell her specifically that he was afraid of contracting Ebola. Ford described Respondent as “flush and flustered and kind of in a little bit of a panic.” She attempted to talk to Respondent and testified that it took a while for him to calm down (Tr. 362-66, 369-71).

Analysis

At trial, Respondent's attorney argued that at the time of the incident, the definition of use of force was "broad and unclear" and pointed to a memorandum issued by the Police Commissioner indicating that new policies would be implemented (Respt. Ex. C). In fact, the new policy was issued in December 2015. Even under the procedure that existed in November 2014, however, Patrol Guide § 203-11, officers were permitted to use "[o]nly that amount of force necessary to overcome resistance" to effect an arrest (p. 1, para. 2). The evidence demonstrated that the force used by Respondent after both Roydall and Person A had been handcuffed was excessive and not related to any legitimate police goal.

There is very little factually that is in dispute. For the most part, the surveillance footage depicts what happened without obstruction or confusion. Respondent struck Roydall repeatedly while he was handcuffed and subdued by Cruz. This conclusion is not altered by the mere possibility that a prisoner might flee even while handcuffed and under the control of an officer. This Court rejects Respondent's contention that he was reaching for his handcuffs after punching Roydall because he did not realize he was already handcuffed. For one thing, it was not necessary for the Department to prove that Respondent did not know Roydall was handcuffed when he struck him. Moreover, taking out handcuffs is a quotidian task for a patrol officer. It does not prove that Respondent actually thought Roydall was not yet handcuffed any more than taking out your MetroCard when approaching the turnstiles at One Police Plaza proves you thought you were still on the subway.

Respondent also kicked Person A as he was handcuffed on the sidewalk and under the control of another officer, Mercado. Respondent's contention that he only faked a kick toward Person A in order to scare him is not supported by the video. The surveillance shows Person A's body being impacted and jerking back, and there is no sign that Respondent held back the motion

of his foot. Five other officers testified that Respondent kicked him. These officers had no reason to fabricate allegations against a fellow officer who had just been spit at by a violent and uncooperative prisoner. If anything, the other officers' testimony at times seemed sympathetic to Respondent, phrased passively to avoid a direct and pointed accusation (see Tr. 89, Sheehan: "[Respondent] walked up towards the individual and I saw a kick"; Tr. 136, Mercado: "[T]he defendant I was holding down was kicked"; Tr. 220, Salamea: "I saw Carranza use his legs to strike the – this person"). The evidence as a whole thus indicated that Respondent gratuitously kicked Person A.

Respondent's attorney argued that if Respondent meant to kick Person A out of "anger" as opposed to "misperception," Person A would have responded more strongly to the kick because there would have been an impact sufficient to affect his demeanor (Tr. 459-60). This argument frankly is ridiculous and the Court rejects it. For one thing, Person A did react physically, as seen on the video. For another, Respondent's conduct on the video demonstrates that he was acting out of anger and not taking legitimate police action. He bent down toward Person A and pointed at him, apparently saying something as he did so, and then kicked him. If the kick was meant only to gain compliance, Respondent's prior steps made no sense.

This Court also finds unconvincing Respondent's defense that he suffered from acute stress disorder and was unable to correctly comprehend reality after being spit on and the contemporaneous fear of Ebola. Respondent's failure to mention his fear of Ebola to his friend the EMT or during his official Department interview is further evidence of its recent fabrication. Respondent's supposed fear of Ebola – promoted at trial as the key factor in his dissociative state – also was objectively incredible. There is no evidence that the three prisoners, other than being African-American, had anything to do with West Africa. No infections were taking place in New York. Finally, there are other much more common blood-borne deadly illnesses, older in

the American public's consciousness, like HIV and AIDS, that have long been major concerns. It is evident that Respondent fabricated the Ebola angle to garner sympathy at trial.

While Respondent was certainly involved in a volatile and dangerous situation, a police officer is required to act at all times in an objectively reasonable manner. Even if this Court were to credit Respondent's psychological defense, it fails to excuse his behavior as a police officer and calls into question his ability to adequately perform the functions of a uniformed member of the service. The evidence indicated that Respondent's use of force after both men had been handcuffed was borne of retaliatory animus as the result of being spit at in the face. The tribunal notes that Person B did not spit at Respondent, and Respondent did not attack her.

In sum, the Department proved that Respondent repeatedly struck Roydall Armstrong and kicked Person A while each was handcuffed. Accordingly, Respondent is found Guilty.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 22, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Court acknowledges the letter of support submitted on Respondent's behalf from a fellow officer, as well as his awards and citations, and lack of prior formal disciplinary history (see Respt. Ex. F, letter; post-trial submissions; Conf. Mem.).

The Advocate requested that Respondent be terminated for his misconduct. Respondent's attorney argued that this is not a case where termination is warranted and characterized the incident as a "unique set of circumstances at a particular time in our history" (Tr. 461).

Termination previously has been imposed in situations where an officer gratuitously used extreme and excessive force, on duty, against civilians. Cf. Case No. 69817/95 (Dec. 30, 1997) (officer dismissed from Department for smashing store owner's face against counter and kicking him as he fell to floor after he was handcuffed, after owner angrily protested having to give a new bill to a customer after a previous one given as change was objected to as counterfeit); see Case No. 75622/00 (May 31, 2004) (while officer might not have been able to prevent his partner from committing vicious and corrupt assault on a troublesome arrestee, he could have rendered aid to her and reported his partner's actions).

Respondent's attorney cited a recent case in which a police officer negotiated a penalty of 40 vacation days and one year of dismissal probation for an incident in which she kicked and pepper sprayed a handcuffed prisoner, *Case No. 2011-8903* (Aug. 22, 2013). That officer too claimed that she did not know the prisoner was handcuffed and thought he was a threat because she believed he had injured another officer. The officer claimed to have had "tunnel vision."

Here, Respondent's attorney alleged that the present case is actually less severe because "we have it within context and the reason why there was the force used" (Tr. 465). This Court disagrees. The present case involves multiple instances of excessive force on two individuals, a defense that calls into question Respondent's future ability to perform his duties adequately, and evidence that he was acting in retaliation.

This Court finds Respondent's behavior to be inconsistent with that required of police officers and will not recommend that he remain a member of the Department. Respondent's defense that he was unable to appreciate the reality of the situation as it occurred calls into question his future ability to handle all the stressful situations that police officers face during the performance of their duties. It also displays a troubling absence of recognition that he was at fault.

This was a particularly egregious instance of excessive force. Respondent was spit on by two prisoners, and that is unacceptable, worthy of outrage. But instead of seeking medical attention, and removing himself from the situation, Respondent found the two prisoners that he thought could have spit on him while ignoring the third, attempted to beat them into submission, and then walked away. The violence that Respondent inflicted on the Armstrongs was totally gratuitous and unworthy of a law enforcement officer.

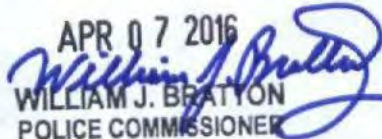
Accordingly, based on the totality of the evidence, and consistent with Department precedent, it is recommended that Respondent be **DISMISSED** from the Department.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

APR 07 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER OSCAR CARRANZA
TAX REGISTRY NO. 931582
DISCIPLINARY CASE NO. 2014-12776

Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his last three annual performance evaluations. He has been awarded two medals for Excellent Police Duty and one Commendation. [REDACTED]

He has no prior formal disciplinary history.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials